IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Misc. application No. 242 of 2006

Date of decision:- 20.04.2006

~~A.F.R. (Approved for Reporting)~~

Not approved for reporting

Date:- 20.04.2006 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 242 of 2006

1. Rakha D/o Shri Chaman Lal
2. Prakashi W/o Shri Chaman Lal
   Both R/o Bhadarabad
   P.S. Jwalapur
   District Haridwar .....Applicants

Versus

1. State of Uttaranchal
2. Chief Judicial Magistrate, Haridwar
   District Haridwar
3. Suraj Pal S/o Shri Nakli Ram Valmiki
   R/o Rajeev Colony near Rahi Motel
   Haridwar, District Haridwar ...Respondents

Sri Parikshit Saini learned counsel for the applicants.

Hon'ble J. C. S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the chargesheet dated 19.08.2005 and cognizance order dated 19.09.2005 passed by the Chief Judicial Magistrate, Haridwar in case No.5244/2005 under section 363, 366, 376 IPC.

2. Brief facts of the case are that an FIR was lodged by the respondent No.3-Suraj Pal alleging therein that his daughter-Km. Sangeeta was enticed away by the applicant-Rekha. It was further alleged that the victim was taken to bus stand where the accused Satish, Deepak, Kallu and mother of Rekha met her. Thereafter, the victim was taken to Delhi and after some time she came back to Haridwar after lodging the FIR. Thereafter, the chargesheet was submitted under sections 363, 366, 376 IPC against the accused Deepak. The chargesheet was also submitted against rest of the accused Satish, Kallu, Rekha and Prakashi under section

363 & 366 IPC. But, the learned Magistrate has taken cognizance against all the accused persons under sections 363, 366 & 376 IPC vide order dated 19.09.2005. Feeling aggrieved by this, the present petition has been filed.

3. Learned counsel for the applicant contended that the statement of the girl was recorded by the I.O. on 06.07.2005. The girl has stated that she had love affair with the accused Deepak and she went with him in her own record. She has further stated that she is 21 years of age. Learned counsel for the applicants contended that the learned Magistrate while treating her minor gave her custody to the father. When she was examined under section 164 Cr.P.C. she has corroborated the story as narrated in the FIR. When a specific question regarding rape was put to her, she stated that she was forced to remain with the accused in the night like his wife. Learned counsel for the applicants contended that the case of rape is not made out against the present applicants even if the conclusion of the I.O. is taken into account. Perusal of the record reveals that there is no averment of rape against the present applicants. The Magistrate has not given any reason as to why the cognizance was taken against the present applicants under section 376 IPC. There is no reason why the major girl was given in the custody of her parents. The fundamental principle of law is that if the girl is major, she should be given liberty to go according to her own choice. The girl has admitted that she is about 21 years of age. Even then, the Magistrate has passed the order which is against the principle of law. Perusal of the record reveals that the Magistrate has not applied his mind while passing the cognizance

order. In view of the above, the cognizance order is liable to be quashed only against the present applicants.

4. Therefore, the cognizance order dated 19.09.2005 passed by the Chief Judicial Magistrate, Haridwar in case No.5244/2005 is hereby quashed so far as the present applicants are concerned. The case is remitted back to the learned Magistrate, who will pass the appropriate order in the light of the observations made above.

5) The petition is disposed of accordingly.

(J.C.S. Rawat, J.)

Dated 20.04.2006

LSR